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December 8, 2004

VIA HAND DELIVERY

RECEIVED

DEC 08 2004

PUBLIC SERVICE
COMMISSION

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Application of Louisville Gas and Electric Company for an Adjustment of its Gas and Electric Rates, Terms and Conditions
Case No. 2003-00433

Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, Terms and Conditions
Case No. 2003-00434

Dear Ms. O'Donnell:

Enclosed please accept for filing two originals and five copies each of Louisville Gas and Electric Company's and Kentucky Utilities Company's Response to Motion to Extend Deadline for Attorney General's Report in the above-referenced matters. Please confirm your receipt of these filings by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,


Kendrick R. Riggs

KRR/ec

Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

DEC 08 2004

**APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR AN ADJUSTMENT)
OF THE GAS AND ELECTRIC RATES,)
TERMS AND CONDITIONS)**

PUBLIC SERVICE)
COMMISSION)
CASE NO. 2003-00433

In the Matter of:

**APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR AN ADJUSTMENT)
OF THE ELECTRIC RATES, TERMS AND)
CONDITIONS)**

CASE NO. 2003-00434

**RESPONSE TO MOTION TO EXTEND DEADLINE
FOR ATTORNEY GENERAL'S REPORT**

The Attorney General's request for an extension of time until at least January 31, 2004 to file his report should be denied.

On August 12, 2004, the Commission issued an Order directing the AG to file a report by October 12, 2004, stating his findings concerning the AG's allegations that the Final Orders issued by the Commission in these cases were tainted by collusion and improper *ex parte* contacts. The Commission extended that deadline by 2 months, to December 17, 2004. The deadline should not be extended again.

Between August 6 and August 20, 2004, the Companies produced 12,000 pages of email, phone records, calendar entries and other documents responsive to the AG's First Subpoena. These documents disclosed all contacts the Companies had with the Commission from January 1, 2003 to June 30, 2004. In response to a second, much broader subpoena issued August 31, 2004, the Companies produced 2,630 additional pages of email, phone records, credit card records,

receipts, expense reports, and lobbying-related documents. Production of these documents began on September 27, 2004 and was completed on November 22, 2004, pursuant to a November 8 order of the Franklin Circuit Court narrowing the scope of the Second Subpoena.¹ On November 22, Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) notified the Commission that they had fully complied with the First and Second Subpoenas, and that the AG now had in his possession all documents necessary to prepare his report for the Commission.

The facts set forth in the AG’s motion fall far short of stating valid grounds for a lengthy extension of time to file a report that is already almost two months overdue and concerning allegations first made in May, 2004. First, the AG suggests that the Companies’ have not been responsive to the AG’s questions regarding the completeness of the production under the Second Subpoena. In fact, the Companies have repeatedly offered to meet in person to assist the AG in interpreting expense-related documents produced under the Second Subpoena, and provided assistance over the telephone more than a month ago on November 7. Most recently, on December 6, 2004, the Companies responded in detail to the AG’s request for assistance in understanding the information displayed on expense reports, and offered additional assistance. (See letter from D. Kaplan to T. Leatherman, attached as Exhibit A)

The privilege log served under the Second Subpoena also provides no basis for delay. The length of the privilege log is a product of the incredible breadth of the Second Subpoena, which required the Companies to produce all documents “evidencing” or “produced as a result

¹ The circumstances which led the Franklin Circuit Court to grant the Companies’ motion to modify the Second Subpoena and deny the AG’s motion for sanctions are fully set forth in the Companies’ Response to Attorney General’s Motion to Set Aside Rate Determinations and Summary of Disputed Items, 11/3/04, pp. 1-7, and will not be repeated here. However, the Franklin Circuit Court’s Order is conclusive proof that the AG’s failure to meet the initial October 12 deadline for filing his report was entirely due to the unreasonable breadth of the Second Subpoena.

of” communications with the PSC. Inevitably, this wide net captured hundreds of emails involving privileged attorney-client communications exchanged in the Rate Cases and myriad other legal matters. The subject lines of these emails clearly show that the vast majority of them – while encompassed by the AG’s unreasonably broad request – are obviously not relevant to the matters the AG must address in his report to the Commission. The user-friendly format of the privilege log would make it very easy for the AG to quickly identify any potentially relevant documents if that were his true goal. The mere page length of the log is no reason for delay.

The AG’s receipt of 20,000 pages of credit card records from American Express also provides no justification for further delay. The Companies have already produced all relevant American Express receipts to the AG. His third-party subpoena to American Express merely sought all the Companies’ records, no matter how irrelevant.

Specifically, the Second Subpoena unreasonably requested copies of the corporate credit card records of 300 LG&E employees, regardless of whether any of their expenditures related to the Commission, or even whether these employees had any contact with the Commission. The Companies objected to this unreasonably burdensome and intrusive request and promptly produced all credit card records showing expenditures for meals at which a Commission employee was or may have been present. The AG nevertheless issued a third-party subpoena upon American Express for all the Companies’ credit card records, which by definition includes thousands of pages of documents that are totally irrelevant to an investigation of improper *ex parte* contacts.

As of November 22, 2004, the AG had in his possession all documents, including credit card records, receipts, and expense reports, regarding any expenditure for any reception or dinner attended by any member of the Commission for the period January 1, 2002 through June 30,

2004. These are precisely the expenditures that the AG has claimed to be investigating to prove his allegations of collusion and *ex parte* contacts. The thousands of pages of credit card records received from American Express contain no relevant information that has not already been produced.

The AG now has in his possession every piece of information reasonably needed to demonstrate whether there were any improper *ex parte* communications regarding the Rate Cases or whether there was any collusion. The vast majority of the relevant documents were produced under the First Subpoena last August. Indeed, the AG has repeatedly stated that the Second Subpoena has a much broader focus than merely investigating *ex parte* contacts, also requesting information relating to possible legislative reform. That is no reason to delay filing his report with the Commission.

Notwithstanding the tangential relationship of the Second Subpoena to the matters to be addressed in the AG's report, the Companies diligently produced all relevant expense-related documents and cell phone records from the 2003-2004 timeframe by the end of September. The 2002 documents produced under the Second Subpoena in November, pursuant to Judge Crittenden's Order, were of the same type and should have been easy to quickly review and process. The documents produced under the Second Subpoena relating to lobbying the legislature are irrelevant to the Commission's investigation and need not be reviewed by the AG to complete his report.

In sum, neither the production of documents under the Second Subpoena, nor the recent delivery of credit card records by American Express, provides a reasonable basis for the AG's request for a six week extension of the time limit for filing his report and recommendation. The

Companies respectfully request that the AG's motion be denied and that the Commission require the AG's report to be filed on December 17, 2004, as previously ordered.

Dated: December 8, 2004

Respectfully submitted,



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Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice was served on the following persons on the 8th day of December 2004, U.S. mail, postage prepaid:

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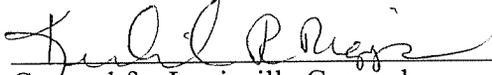

Counsel for Louisville Gas and
Electric Company and
Kentucky Utilities Company

EXHIBIT A

**Frost
Brown Todd** LLC
ATTORNEYS

KENTUCKY · OHIO · INDIANA · TENNESSEE

David S. Kaplan
(502) 568-0356
DKAPLAN@FBTLAW.COM

December 6, 2004

**VIA FACSIMILE AND
U.S. MAIL**

Mr. Todd E. Leatherman, Director
Consumer Protection Division
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Re: Attorney General Civil Subpoena and Investigative Demand issued pursuant to
KRS Chapter 367

Dear Todd:

I am writing to respond to your December 2, 2004 letter addressed to me and Sheryl Snyder regarding LG&E's production of documents under the Second Subpoena.

The questions posed in your letter concerning which screen shots correspond to which documents, and which documents are responsive to which numbered request, illustrate why the fastest way to resolve your concerns is to sit down and talk them through. For example, on November 16, 2004, we produced documents numbered LG&E/AGI-2 2073-2094 in order to address your concern that some relevant information may not have been displayed in expense reports we produced on October 12, 2004 (LG&E/AGI-2 1105-1148). These "reprints" of certain expense reports were intended to display fully all information from the fields revealed in the previously produced documents. We do not believe that any relevant information is missing from the documents produced at LG&E/AGI-2 2073-2094.

Specifically, pages 2074 and 2075 are reprints of the expense report previously produced at pages 1122-24. On page 1122, there were two fields – "Attended Dinner" and "Misc Description" – that were not fully displayed. Accordingly, we produced pages 2074 and 2075 which "explode" those two fields in order to fully display the information therein. All other information contained in the "Misc Description" column on pages 2074 and 2075 is irrelevant and could have been redacted. LG&E is under no obligation to "explode" this additional field in a separate document.

The same principles apply to all other "reprints" produced on November 16, 2004. For

Mr. Todd E. Leatherman, Director
December 6, 2004
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example, page 2076 displays the entire contents of the field under the "Attended Dinner" column that was not fully displayed on page 1125. Pages 2077 and 2078 do the same for two fields on page 1133. In all cases, you should reference the expense report originally produced on October 12, 2004 and look for fields in which information was not fully disclosed, in order to determine the completeness of the information that has been produced in the "reprints."

We do not understand what you mean when you say that the "November 16 production was produced in nonsequential numbers which greatly complicates the review and document handling process." These "reprints" were all grouped together by date and the transmittal letter clearly stated that they corresponded to the documents produced on October 12, 2004 at pages LG&E/AGI-2 1105-1148.

Due to your demands for expedited production, we have produced documents on a rolling basis as they have been received from LG&E and reviewed by us. Therefore, some receipts, credit card statements, and expense reports were not produced to you at exactly the same time. However, we have always been willing to assist you in organizing and understanding these documents. In fact, when you, Janet Graham, Pierce Whites, Tom O'Brien, and I spoke by phone on November 10, I offered to assist you with grouping together related receipts, credit card records, and expense reports. We in fact went through this process on the phone with respect to certain expense-related documents for the years 2003-2004 which were produced at pages 249-263, 288-300, 596-597, and 1103-1141. I would be more than happy to work with anyone in your office to provide additional help understanding any of the documents we have produced under the Second Subpoena.

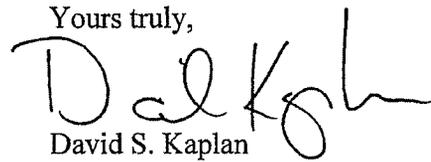
With respect to receipts, you are correct that LG&E's accounting system allows for receipts to be scanned into the system as back-up documentation for amounts reflected on expense reports. Printed copies of these receipts have been produced under the Second Subpoena. For example, page 254 shows two receipts for \$ 270.47 and \$ 79.30. These are the same amounts shown on the February 25, 2003 expense report at pages 1122-1124, as well as the credit card statement at page 253. Again, I would be happy to help you associate any such documents with one another. All such documents from 2002 have been grouped together in a self-explanatory fashion, so I do not anticipate you to need further assistance with respect to those.

Finally, we must continue to object to your demand for the wholesale production of employee expense reports for 2002-2004 regardless of whether the information they contain relates to the subject of your investigation. This request is beyond the scope of the Second Subpoena itself, much less the scope of Judge Crittenden's order narrowing the Second Subpoena. Judge Crittenden's ruling on the American Express records was to deny LG&E's motion to quash a subpoena served by your office upon a third-party, while restricting your office's use of that information. Judge Crittenden's November 8, 2004 Order on the scope of the Second Subpoena carefully distinguishes relevant information from information which is irrelevant. It is clearly consistent with this ruling to produce those portions of expense reports reflecting expenditures encompassed by the Second Subpoena as narrowed by Judge Crittenden.

Mr. Todd E. Leatherman, Director
December 6, 2004
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The record shows that LG&E's production of such relevant information has been done thoroughly and with the utmost good faith.

If you have any further questions or concerns with our production of documents under the Second Subpoena, please do not hesitate to contact me. Meanwhile, we look forward to Pierce's response to Sheryl's request for an in-person meeting.

Yours truly,

David S. Kaplan

DSK:skn

cc: Dorothy E. O'Brien
Pierce Whites
Sheryl G. Snyder

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